

MOHAMMED K. GHODS (SBN 144616)
JEREMY A. RHYNE (SBN 217378)
LEX OPUS
2100 N. Broadway, Suite 210
Santa Ana, CA 92706
Telephone: (714) 558-8580
Facsimile: (714) 558-8579
jrhynes@lexopusfirm.com

RUBEN ESCOBEDO (SBN 277866)
WORKWORLD LAW CORP.
A Professional Corporation
731 S. Lincoln Street
Santa Maria, CA 93458
Telephone: (805) 335-2476
Facsimile: (805) 892-6213
Email: ruben@workworldlaw.com

Attorneys for STATE OF CALIFORNIA ex rel.
JUAN ZARAGOZA,
as Private Attorney General

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN – METRO DIVISION

STATE OF CALIFORNIA ex rel.
JUAN ZARAGOZA AND GLORIA
PRIETO-RAMOS, as Private Attorney
General,

Plaintiff,

v.

SUPREME VALLEY AG, INC., a
corporation; and DOES 1-25, inclusive,

Defendants.

Case No. BCV-20-101568

Assigned for All Purposes to:

**COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

Trial Date: None

Complaint filed:

COMES NOW Plaintiff STATE OF CALIFORNIA ex rel. JUAN ZARAGOZA and
GLORIA PRIETO-RAMOS as Private Attorney General (“Plaintiffs”), who assert claims against
UNITED AG PERSONNEL MANAGEMENT, INC., a corporation, and DOES 1 through 25,
inclusive (collectively “Defendants” or “Employers”) as follows:

1 **INTRODUCTION**

2 1. Plaintiffs bring this action under the Labor Code Private Attorneys General Act of
3 2004 ("PAGA"), Labor Code sections 2698, *et seq.*, on behalf of the State of California for
4 approximately 2,500 similarly situated non-exempt current and former aggrieved employees, and
5 the People of the State of California ("Employees") employed by Defendants at any time from
6 April 6, 2019, through the resolution of this action ("Statutory Period").

7 2. PAGA, specifically Section 2699, subdivision (a) of the California Labor Code,
8 permits an aggrieved employee to recover civil penalties set forth within the California Labor Code
9 for violations of the California Labor Code. In addition, Section 2699(f) establishes civil penalties
10 for violations of California Labor Code provisions that do not contain their own civil
11 penalties. Employees bring this civil action to recover civil penalties for the violations identified
12 below, including civil penalties pursuant to Section 2699, subdivision (f) as well as those civil
13 penalties specifically set forth within the text of the California Labor Code. Those civil penalties
14 are sought for violations committed against Employees of Employers.

15 3. Pursuant to Section 2699.3, subdivisions (a)(1) and (b)(1), Plaintiffs gave proper
16 notice to the California Labor and Workforce Development Agency, the Division of Occupational
17 Safety and Health, and Defendants, of the specific provisions of the California Labor Code alleged
18 to have been violated, including the facts and theories to support the alleged violation. Neither the
19 LWDA nor the Division of Occupational Safety and Health inspected or investigated the violations.
20 With respect to those violations that were curable under Subdivisions (b)(1) and/or (c)(1), the
21 Employers failed to cure the violations within the time provided under PAGA. Plaintiffs and
22 Employees are, therefore, entitled to all civil penalties pursuant to Sections 2699(a), and pursuant
23 to Section 2699(f), in addition to Plaintiffs' costs and attorneys' fees.

24 **JURISDICTION AND VENUE**

25 4. This Court has jurisdiction over this action pursuant to the California Constitution,
26 Article VI, §10.

27 5. Venue is proper in this Court because this action arises from employment in Kern
28 County.

PARTIES

6. For all times relevant herein, JUAN ZARAGOZA AND GLORIA PRIETO-RAMOS were adult individuals residing in Kern County, California. Plaintiffs are not suing in their individual capacity; they are proceeding herein solely under the PAGA, on behalf of the State of California for all aggrieved employees, including themselves and approximately 2,500 other aggrieved employees.

7. For all times relevant herein, Plaintiffs are informed and believe, and on that basis allege, that Defendant SUPREME VALLEY AG, INC. was and is a California corporation with its principal California place of business in Kern County, California.

8. Whenever in this Complaint reference is made to any act, deed, or conduct of Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through one or more of its agents, employees, or representatives, who was actively engaged in the management, direction, control, or transaction of the business and affairs of Defendants.

9. Plaintiffs are ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of the defendants sued herein as Does 1 through 25, inclusive, and therefore sues said defendants (the "Doe Defendants") by such fictitious names. Plaintiffs will amend this Complaint to insert the true names and capacities of the Doe Defendants at such time as the identities of the Doe Defendants are ascertained.

10. Plaintiffs are informed and believe, and based thereon allege, that the Doe Defendants are the partners, agents, or principals and co-conspirators of Defendants, and of each other; that Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the liability of Defendants as alleged herein.

11. Plaintiffs are further informed and believe, and thereon allege, that at all times herein material, each Defendant was completely dominated and controlled by its co-Defendant(s) and each was the alter ego of the other. Whenever and wherever reference is made in this Complaint to any conduct by Defendants, or any of them, such allegations and references shall also be deemed to

1 mean the conduct of each of the Defendants, acting individually, jointly, and severally. Whenever
2 and wherever reference is made to individuals who are not named as defendants in this Complaint,
3 but were employees and/or agents of Defendants, such individuals at all relevant times acted on
4 behalf of Defendants named in this Complaint within the scope of their respective employment or
5 agency with Defendants.

6 **FIRST COUNT**

7 **Failure to Provide or Pay for Recovery Periods**

8 **(By Plaintiffs against All Defendants)**

9 12. Plaintiffs incorporate by reference and reallege each and every allegation contained
10 above, as though fully set forth herein.

11 13. “An employer shall not require an employee to work during a ... recovery period
12 mandated pursuant to an applicable statute, or applicable regulation, standard, or order of ... the
13 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and
14 Health.” Cal. Lab. Code, § 226.7, subd. (b). “As used in this section, ‘recovery period’ means a
15 cooldown period afforded an employee to prevent heat illness.” Cal. Lab. Code, § 226.7, subd. (a).
16 “A rest or recovery period mandated pursuant to a state law ... shall be counted as hours worked,
17 for which there shall be no deduction from wages.” Cal. Lab. Code, § 226.7, subd. (d). “If an
18 employer fails to provide an employee a ... recovery period in accordance with a state law ... the
19 employer shall pay the employee one additional hour of pay at the employee’s regular rate of
20 compensation for each workday that the meal or rest or recovery period is not provided.” Cal. Lab.
21 Code, § 226.7, subd. (c).

22 14. Pursuant to the applicable regulation, “[w]hen the outdoor temperature in the
23 work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas
24 with shade at all times while employees are present that are either open to the air or provided with
25 ventilation or cooling. The amount of shade present shall be at least enough to accommodate the
26 number of employees on recovery or rest periods, so that they can sit in a normal posture fully in
27 the shade without having to be in physical contact with each other. The shade shall be located as
28 close as practicable to the areas where employees are working. Subject to the same specifications,

1 the amount of shade present during meal periods shall be at least enough to accommodate the
2 number of employees on the meal period who remain onsite.” Cal. Code Regs., tit. 8, § 3395, subd.
3 (d)(1).

4 15. “Employees shall be allowed and encouraged to take a preventative cool-down rest
5 in the shade when they feel the need to do so to protect themselves from overheating. Such access
6 to shade shall be permitted at all times. An individual employee who takes a preventative cool-down
7 rest (A) shall be monitored and asked if he or she is experiencing symptoms of heat illness; (B) shall
8 be encouraged to remain in the shade; and (C) shall not be ordered back to work until any signs or
9 symptoms of heat illness have abated, but in no event less than 5 minutes in addition to the time
10 needed to access the shade.” Cal. Code Regs., tit. 8, § 3395, subd. (d)(3). “For purposes of this
11 section, preventative cool-down rest period has the same meaning as ‘recovery period’ in Labor
12 Code Section 226.7(a).” Cal. Code Regs., tit. 8, § 3395, subd. (e)(6).

13 16. “When temperatures reach 95 degrees or above, the employer shall ensure that the
14 employee takes a minimum ten minute net preventative cool-down rest period every two hours. The
15 preventative cool-down rest period required by this paragraph may be provided concurrently with
16 any other meal or rest period required by Industrial Welfare Commission Order No. 14 (8 CCR
17 11140) if the timing of the preventative cool-down rest period coincides with a required meal or rest
18 period thus resulting in no additional preventative cool-down rest period required in an eight hour
19 workday. If the workday will extend beyond eight hours, then an additional preventative cool-down
20 rest period will be required at the conclusion of the eighth hour of work; and if the workday extends
21 beyond ten hours, then another preventative cool-down rest period will be required at the conclusion
22 of the tenth hour and so on.” Cal. Code Regs., tit. 8, § 3395, subd. (e)(6).

23 17. Throughout the Statutory Period, Defendant failed to allow or encourage
24 Employees, including Mr. Zaragoza and Ms. Prieto-Ramos, to take shaded recovery periods as
25 required by law when temperatures exceeded eighty degrees and when temperatures were eighty
26 degrees and lower. Defendant also failed to ensure that Employees took cool-down rest periods at
27 any time, including when temperatures reached ninety-five degrees, which occurred regularly
28 throughout the Statutory Period. Employees were not allowed to take a recovery period in the shade

1 whenever they felt the need to do so to protect themselves from overheating, as required by
2 regulation; rather, Employer advised Employees they could take a recovery period only if they felt
3 sick due to heat. Employer maintained an unlawfully high threshold for Employees to be permitted
4 to take heat recovery periods, and consequently failed to provide heat recovery periods to Employees
5 as required by law. Moreover, Defendant failed to pay Employees premium wages owed for its
6 failure to provide heat recovery periods. Defendant is subject to civil penalties for its violations of
7 § 226.7 and § 3395.

8 **SECOND COUNT**

9 **Inaccurate Wage Statements**

10 **(By Plaintiffs against All Defendants)**

11 18. Plaintiffs incorporate by reference and reallege each and every allegation contained
12 above, as though fully set forth herein.

13 19. Every employer shall, semimonthly or at the time of each payment of wages, furnish
14 each of his or her employees, either as a detachable part of the check, draft, or voucher paying the
15 employees' wages, or separately when wages are paid by personal check or cash, an accurate
16 itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the
17 employee, except for any employee whose compensation is solely based on a salary and who is
18 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
19 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
20 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
21 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
22 net wages earned, ... (7) the name of the employee and only the last four digits of his or her social
23 security number or an employee identification number other than a social security number, ..., and
24 (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours
25 worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a
26 temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked
27 for each temporary services assignment." Cal. Lab. Code, § 226, subd. (a).

20. “Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.” Cal. Lab. Code, § 226.3.

21. Throughout the Statutory Period, Defendant failed to furnish Employees, including Plaintiffs, with accurate itemized statements at the time of each payment of wages showing the correct gross wages earned and correct net wages earned. Defendant failed to capture and pay Employees premium pay for missed recovery periods on their wage statements. Consequently, Defendant failed to provide Employees accurate itemized wages statements as required by Section 226. As a result, Plaintiffs and Employees are entitled to statutory civil penalties.

THIRD COUNT

Untimely Payment of Wages

(By Plaintiffs against All Defendants)

22. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

23. Generally, “[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Cal. Lab. Code, § 204, subd. (a).

24. Generally, “[l]abor performed by a weekly-paid employee during any calendar week and prior to or on the regular payday shall be paid for not later than the regular payday of the employer for such weekly-paid employee falling during the following calendar week. Labor performed by a weekly-paid employee during any calendar week and subsequent to the regular

1 payday shall be paid for not later than seven days after the regular payday of the employer for such
2 weekly-paid employee falling during the following calendar week.” Cal. Lab. Code, § 204b.

3 25. Special rules govern agricultural employees, however: “All wages, other than those
4 mentioned in Sections 201 and 202, earned by any agricultural employee, as defined in Section
5 1140.4, are due and payable twice during each calendar month, on days designated in advance by
6 the agricultural employer as the regular paydays. Labor performed between the 1st and the 15th
7 days, inclusive, of any calendar month shall be paid between the 16th and the 22nd day of the month
8 during which the labor was performed. Labor performed between the 16th and the last day,
9 inclusive, of any calendar month shall be paid between the first and the seventh day of the following
10 month.” Cal. Lab. Code, § 205.5.

11 26. “In addition to, and entirely independent and apart from, any other penalty provided
12 in this article, every person who fails to pay the wages of each employee as provided in Sections
13 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows:
14 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2)
15 For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
16 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” Cal.
17 Lab. Code, § 210, subd. (a).

18 27. Plaintiffs allege that rather than timely paying Employees all wages due within the
19 periods set forth above, throughout the Statutory Period, Defendant failed to timely pay Employees
20 for all premium wages as required by law.

21 28. The Employees are therefore entitled to all civil penalties available under the PAGA.

22 **FOURTH COUNT**

23 **Failure to Pay Wages at Termination**

24 **(By Plaintiffs against All Defendants)**

25 29. Plaintiffs incorporate by reference and reallege each and every allegation contained
26 above, as though fully set forth herein.

27 30. “If an employer discharges an employee, the wages earned and unpaid at the time of
28 discharge are due and payable immediately.” Cal. Lab. Code, § 201, subd. (a). “If an employer

1 willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5,
2 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the
3 employee shall continue as a penalty from the due date thereof at the same rate until paid or until an
4 action therefor is commenced; but the wages shall not continue for more than 30 days. An employee
5 who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive
6 the payment when fully tendered to him or her, including any penalty then accrued under this
7 section, is not entitled to any benefit under this section for the time during which he or she so avoids
8 payment.” Cal. Lab. Code, § 203, subd. (a).

9 31. Throughout the Statutory Period, Defendant failed to pay Employees all premium
10 wages for all missed heat recovery periods. These wages were owed and due to those Employees
11 who were terminated at the time of their termination. Defendant did not provide these payments to
12 Employees at the time of termination or within a sufficient time of resignation as required by
13 law. Defendant’s failure to timely pay these wages at the time of termination, and failure to pay
14 Employees’ continued wages for the 30-day period thereafter, constitutes a violation of Sections
15 201 and 203.

16 32. The Employees are entitled to all civil penalties available under the PAGA.

17 **FIFTH COUNT**

18 **Violation of Heat Illness Prevention Health-and-Safety Standards**

19 **(By Plaintiffs against All Defendants)**

20 33. Plaintiffs incorporate by reference and reallege each and every allegation contained
21 above, as though fully set forth herein.

22 34. “Every employer and every employee shall comply with occupational safety and
23 health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations,
24 and orders pursuant to this division which are applicable to his own actions and conduct.” Lab.
25 Code 6407.

26 35. Among these rules, regulations, and orders is Title 8, Section 3395 of the California
27 Code of Regulations, which was applicable to Defendant and the Employees. Throughout the
28 Statutory Period, Defendant violated the following provisions of § 3395:

1 36. “(d) Access to shade. (1) Shade shall be present when the temperature exceeds 80
2 degrees Fahrenheit. When the outdoor temperature in the work area exceeds 80 degrees Fahrenheit,
3 the employer shall have and maintain one or more areas with shade at all times while employees are
4 present that are either open to the air or provided with ventilation or cooling. The amount of shade
5 present shall be at least enough to accommodate the number of employees on recovery or rest
6 periods, so that they can sit in a normal posture fully in the shade without having to be in physical
7 contact with each other. The shade shall be located as close as practicable to the areas where
8 employees are working. Subject to the same specifications, the amount of shade present during meal
9 periods shall be at least enough to accommodate the number of employees on the meal period who
10 remain onsite. (2) Shade shall be available when the temperature does not exceed 80 degrees
11 Fahrenheit. When the outdoor temperature in the work area does not exceed 80 degrees Fahrenheit
12 employers shall either provide shade as per subsection (d)(1) or provide timely access to shade upon
13 an employee's request. (3) Employees shall be allowed and encouraged to take a preventative cool-
14 down rest in the shade when they feel the need to do so to protect themselves from overheating. Such
15 access to shade shall be permitted at all times. An individual employee who takes a preventative
16 cool-down rest (A) shall be monitored and asked if he or she is experiencing symptoms of heat
17 illness; (B) shall be encouraged to remain in the shade; and (C) shall not be ordered back to work
18 until any signs or symptoms of heat illness have abated, but in no event less than 5 minutes in
19 addition to the time needed to access the shade. (4) If an employee exhibits signs or reports
20 symptoms of heat illness while taking a preventative cool-down rest or during a preventative cool-
21 down rest period, the employer shall provide appropriate first aid or emergency response according
22 to subsection (f) of this section. ... “

23 37. Throughout the Statutory Period, Defendant failed to allow or encourage Employees,
24 including Mr. Zaragoza and Ms. Prieto-Ramos, to take shaded recovery periods as required by law
25 when temperatures exceeded eighty degrees and when temperatures were eighty degrees and lower.
26 Employees were not allowed to take a recovery period in the shade whenever they felt the need to
27 do so to protect themselves from overheating, as required by regulation; rather, Employer advised
28 Employees they could take a recovery period only if they felt sick due to heat. Employer maintained

1 an unlawfully high threshold for Employees to be permitted to take heat recovery periods, and
2 consequently failed to provide heat recovery periods to Employees as required by law.

3 38. “(e) **High-heat procedures.** The employer shall implement high-heat procedures
4 when the temperature equals or exceeds 95 degrees Fahrenheit. These procedures shall include the
5 following to the extent practicable: (1) Ensuring that effective communication by voice, observation,
6 or electronic means is maintained so that employees at the work site can contact a supervisor when
7 necessary. An electronic device, such as a cell phone or text messaging device, may be used for this
8 purpose only if reception in the area is reliable. (2) Observing employees for alertness and signs or
9 symptoms of heat illness. The employer shall ensure effective employee observation/monitoring by
10 implementing one or more of the following: (A) Supervisor or designee observation of 20 or fewer
11 employees, or (B) Mandatory buddy system, or (C) Regular communication with sole employee
12 such as by radio or cellular phone, or (D) Other effective means of observation. (3) Designating one
13 or more employees on each worksite as authorized to call for emergency medical services, and
14 allowing other employees to call for emergency services when no designated employee is available.
15 (4) Reminding employees throughout the work shift to drink plenty of water. (5) Pre-shift meetings
16 before the commencement of work to review the high heat procedures, encourage employees to
17 drink plenty of water, and remind employees of their right to take a cool-down rest when necessary.
18 (6) For employees employed in agriculture, the following shall also apply: When temperatures reach
19 95 degrees or above, the employer shall ensure that the employee takes a minimum ten minute net
20 preventative cool-down rest period every two hours. The preventative cool-down rest period
21 required by this paragraph may be provided concurrently with any other meal or rest period required
22 by Industrial Welfare Commission Order No. 14 (8 CCR 11140) if the timing of the preventative
23 cool-down rest period coincides with a required meal or rest period thus resulting in no additional
24 preventative cool-down rest period required in an eight hour workday. If the workday will extend
25 beyond eight hours, then an additional preventative cool-down rest period will be required at the
26 conclusion of the eighth hour of work; and if the workday extends beyond ten hours, then another
27 preventative cool-down rest period will be required at the conclusion of the tenth hour and so on.”

28

1 39. Defendant failed to implement any and all of the foregoing required procedures.
2 Moreover, Defendant also failed to ensure that Employees took cool-down rest periods at any time,
3 including when temperatures reached ninety-five degrees, which occurred regularly throughout the
4 Statutory Period. Defendant's break schedules did not change when temperatures reached 95
5 degrees, and Employees were required to work periods of 2-3 hours without a break in high heat in
6 violation of the law.

7 40. **“(f) Emergency Response Procedures.** The Employer shall implement effective
8 emergency response procedures including: (1) Ensuring that effective communication by voice,
9 observation, or electronic means is maintained so that employees at the work site can contact a
10 supervisor or emergency medical services when necessary. An electronic device, such as a cell
11 phone or text messaging device, may be used for this purpose only if reception in the area is reliable.
12 If an electronic device will not furnish reliable communication in the work area, the employer will
13 ensure a means of summoning emergency medical services. (2) Responding to signs and symptoms
14 of possible heat illness, including but not limited to first aid measures and how emergency medical
15 services will be provided. (A) If a supervisor observes, or any employee reports, any signs or
16 symptoms of heat illness in any employee, the supervisor shall take immediate action commensurate
17 with the severity of the illness. (B) If the signs or symptoms are indicators of severe heat illness
18 (such as, but not limited to, decreased level of consciousness, staggering, vomiting, disorientation,
19 irrational behavior or convulsions), the employer must implement emergency response procedures.
20 (C) An employee exhibiting signs or symptoms of heat illness shall be monitored and shall not be
21 left alone or sent home without being offered onsite first aid and/or being provided with emergency
22 medical services in accordance with the employer's procedures. (3) Contacting emergency medical
23 services and, if necessary, transporting employees to a place where they can be reached by an
24 emergency medical provider. (4) Ensuring that, in the event of an emergency, clear and precise
25 directions to the work site can and will be provided as needed to emergency responders.”

26 41. Defendant failed to implement any and all of the foregoing required procedures.
27 When Employees experienced heat illness, they were told to take a shaded recovery period without
28 the required monitoring; if Employees continued to feel sick after taking a break, Defendant sent

1 Employees home without offering onsite first aid or other emergency medical services or transport.
2 Employees fainted from heat illness, and Defendant failed to provide appropriate first aid or
3 emergency medical services. Employees who fainted were simply carried to the shade. Defendant's
4 procedures failed to comply with the foregoing requirements.

5 42. **“(g) Acclimatization.** (1) All employees shall be closely observed by a supervisor
6 or designee during a heat wave. For purposes of this section only, ‘heat wave’ means any day in
7 which the predicted high temperature for the day will be at least 80 degrees Fahrenheit and at least
8 ten degrees Fahrenheit higher than the average high daily temperature in the preceding five days.
9 (2) An employee who has been newly assigned to a high heat area shall be closely observed by a
10 supervisor or designee for the first 14 days of the employee's employment.”

11 43. Defendant failed to provide the required monitoring throughout Employees’
12 employment.

13 44. **“(h) Training.** (1) Employee training. Effective training in the following topics shall
14 be provided to each supervisory and non-supervisory employee before the employee begins work
15 that should reasonably be anticipated to result in exposure to the risk of heat illness: (A) The
16 environmental and personal risk factors for heat illness, as well as the added burden of heat load on
17 the body caused by exertion, clothing, and personal protective equipment. (B) The employer's
18 procedures for complying with the requirements of this standard, including, but not limited to, the
19 employer's responsibility to provide water, shade, cool-down rests, and access to first aid as well as
20 the employees' right to exercise their rights under this standard without retaliation. (C) The
21 importance of frequent consumption of small quantities of water, up to 4 cups per hour, when the
22 work environment is hot and employees are likely to be sweating more than usual in the performance
23 of their duties. (D) The concept, importance, and methods of acclimatization pursuant to the
24 employer's procedures under subsection (i)(4). (E) The different types of heat illness, the common
25 signs and symptoms of heat illness, and appropriate first aid and/or emergency responses to the
26 different types of heat illness, and in addition, that heat illness may progress quickly from mild
27 symptoms and signs to serious and life threatening illness. (F) The importance to employees of
28 immediately reporting to the employer, directly or through the employee's supervisor, symptoms or

1 signs of heat illness in themselves, or in co-workers. (G) The employer's procedures for responding
2 to signs or symptoms of possible heat illness, including how emergency medical services will be
3 provided should they become necessary. (H) The employer's procedures for contacting emergency
4 medical services, and if necessary, for transporting employees to a point where they can be reached
5 by an emergency medical service provider. (I) The employer's procedures for ensuring that, in the
6 event of an emergency, clear and precise directions to the work site can and will be provided as
7 needed to emergency responders. These procedures shall include designating a person to be
8 available to ensure that emergency procedures are invoked when appropriate. (2) Supervisor
9 training. Prior to supervising employees performing work that should reasonably be anticipated to
10 result in exposure to the risk of heat illness effective training on the following topics shall be
11 provided to the supervisor: (A) The information required to be provided by section (h)(1) above.
12 (B) The procedures the supervisor is to follow to implement the applicable provisions in this section.
13 (C) The procedures the supervisor is to follow when an employee exhibits signs or reports symptoms
14 consistent with possible heat illness, including emergency response procedures. (D) How to monitor
15 weather reports and how to respond to hot weather advisories.”

16 45. Defendant failed to provide the foregoing training to Employees.

17 46. **“(i) Heat Illness Prevention Plan.** The employer shall establish, implement, and
18 maintain, an effective heat illness prevention plan. The plan shall be in writing in both English and
19 the language understood by the majority of the employees and shall be made available at the
20 worksite to employees and to representatives of the Division upon request. The Heat Illness
21 Prevention Plan may be included as part of the employer's Illness and Injury Prevention Program
22 required by section 3203, and shall, at a minimum, contain: (1) Procedures for the provision of water
23 and access to shade. (2) The high heat procedures referred to in subsection (e). (3) Emergency
24 Response Procedures in accordance with subsection (f). (4) Acclimatization methods and
25 procedures in accordance with subsection (g).”

26 47. Defendant failed to establish, implement, and maintain an effective heat illness
27 prevention plan in accordance with law.

28 48. Defendants are subject to civil penalties as provided by law.

SIXTH COUNT

Failure to Produce Employment Records Upon Request

(By Plaintiffs against All Defendants)

49. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

50. “Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee. (b) (1) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer’s receipt of the written request.” Lab. Code, § 1198.5, subds. (a) and (b).

51. “An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee. (c) An employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this subdivision. An employer may designate the person to whom a request under this subdivision will be made.” Lab. Code, § 226, subds. (b) and (c).

52. Defendant violated these provisions by failing to allow Plaintiffs access to all records which they are entitled to inspect. Defendant failed to produce any records in response to Employees' requests, including Mr. Zaragoza's and Ms. Prieto-Ramos's requests, made under the foregoing provisions. Employer is therefore subject to additional civil penalties as provided by law.

PRAYER

WHEREFORE, Plaintiffs and Employees pray for judgment against Defendant, as follows:

1. For civil penalties pursuant to Labor Code sections 2698, *et seq.* in an amount not less than \$1,000,000;
2. For reasonable costs and attorneys' fees; and
3. For such other and further relief as the Court deems proper.

DATED: July 6, 2020

WORKWORLD LAW

By:

RUBEN ESCOBEDO

Attorney for STATE OF CALIFORNIA ex
rel. JUAN ZARAGOZA AND GLORIA
PRIETO-RAMOS, as Private Attorney
General